IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2599 OF 2004

Dr. Lingraj Balasaheb Swami ...Petitioner.

V/s

The State of Maharashtra. ...Respondent

Mr. A.P. Mundargi i/b Niranjan Mundargi for the petitioner.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 3rd March, 2005

P.C.

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. Petitioner is the original complainant who is aggrieved by the order passed by the Metropolitan Magistrate who has accepted the report of the police which was filed pursuant to the direction given by the Magistrate under section 156(3) of the Criminal Procedure Code and dismissed the complaint without giving any notice to the petitioner - complainant.

3. Brief facts are that there was a dispute between two branches of the same family. The allegation of the petitioner in the complaint before the Magistrate is that the accused had fabricated the documents

pertaining to the property which has fallen to their branch and on the basis of the said forged documents had obtained loan from the Bank and further, in collusion with the Bank, had obtained certain orders from the Civil Court in respect of the said property. After the complaint was lodged in the Court of Chief Judicial Magistrate, Kolhapur, the order was passed by the Magistrate directing that the investigation should be carried out by the police as per the provisions of section 156(3) of the Code of Criminal Procedure. The police submitted report to the Magistrate stating therein that since this was essentially a civil dispute between two branches of the family, no case is made out. After the report was received by the Magistrate, from the record it can be seen that the Magistrate has passed an order by putting a rubber stamp on the said report. The said rubber stamped order reads as under:-

> "Perused the report and case papers. "B" Summary is hereby granted. Valuable Muddemal property be sold in public auction and sale proceeds be credited to the State treasury and being worthless be destroyed."

This order obviously has been passed, firstly, without any application of mind and secondly without giving any notice to the complainant. It is a settled law that if an order is passed by the Magistrate without issuing notice to the complainant then the order dropping the criminal case is illegal. The order of the Magistrate, therefore, will have to be set aside.

4. Magistrate to give notice to the complainant and after hearing the complainant pass the order on merits in accordance with law. Writ Petition is allowed in the above terms.

V.M. KANADE, J.